Supreme Court, U.S.
FILED
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No. 01-1006

In the Supreme Court of the United States

JAMES B. GARNET, SR.,
Petitioner,

v.

GENERAL MOTORS CORPORATION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RESPONDENT GENERAL MOTORS CORPORATION'S BRIEF IN OPPOSITION TO JAMES B. GARNET'S PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This case involved a claim of reverse discrimination, asserted under a state statute, that was dismissed at the summary judgment stage because the Petitioner, James Garnet, failed to produce competent evidence to support the claim. Garnet's claim, expressly brought under the Ohio Civil Rights Act, Ohio Revised Code Chapter 4112, does not involve any federal question, nor does Garnet identify any conflicting authority among federal courts or state courts.

The petition raises the following issue under Ohio state law:

> Did the Court of Appeals for the Sixth Circuit reversibly err in affirming the Ohio District Court's grant of summary judgment in favor of General Motors Corporation ("General Motors") on Garnet's state law reverse discrimination claim brought under Ohio Revised Code § 4112.02(A), when Garnet did not produce evidence of unlawful discrimination by General Motors.

PARTIES TO THE PROCEEDING

In 1996, Petitioner Garnet, a white male, applied for a job position at General Motors' Packard Electric plant ("Packard plant") in Warren, Ohio. At that time, the Packard plant was part of Delphi Automotive Systems, an operating division of General Motors. In 1999, Delphi Automotive Systems Corporation ("Delphi") became an independent, publicly traded corporation and was divested from General Motors.

Pursuant to a 1999 Employee Matters Agreement between General Motors and Delphi, Delphi assumed responsibility for the captioned litigation. For ease of reference, we refer to the Respondent as "General Motors" throughout.

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RESPONDENT GENERAL MOTORS CORPORATION'S BRIEF IN OPPOSITION TO JAMES B. GARNET'S PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

I. FACTUAL HISTORY

The Court of Appeals for the Sixth Circuit and the Ohio District Court accurately set forth the pertinent facts related to Garnet's reverse discrimination claim brought pursuant to Ohio Revised Code § 4112.02. [Pet'r App. pp. 5a-7a, 9a-20a]. Briefly stated, Garnet's claim involved his unsuccessful attempt to obtain a job position as an apprentice in the Electrician trade at the Packard plant in 1996.

Many "facts" in Garnet's Petition are at odds with the undisputed evidence or have no record support. For instance, Garnet asserts that "GM has maintained certain percentages of minorities and women in its skilled-trades apprenticeship workforce through a number of so-called 'reverse' discriminatory practices in its apprentice selection process." [Petition pp. 2-3]. Aside from the unsupported legal conclusion he asserts, Garnet does not articulate what percentage of minorities and women General Motors allegedly "maintained." In fact, the record below established that the Packard plant had hired 161 white males out of a possible 221 apprentices in all skilled trades since 1993. [Pet'r App. pp. 20a]. Prior to placement of the 1996 apprentice class for which Garnet applied, 192 out of 210 (over 91%) of the employees working in the Electrician skilled trade were white males. [Pet'r App. p. 17a]. There is no record evidence, nor could there be, of any "maintained" number of female and minorities in General Motors' apprentice program.

Also without any record support, Garnet asserts that, "[b]efore hiring from the top of those [apprentice] lists, GM conducts a 'race' and 'sex' analysis to determine whether the prospective hirees will include enough minorities and females to meet its perceived 'affirmative-action' percentage requirements." [Petition p. 3]. Nothing in the record supports this remark. There is no evidence that General Motors had "affirmative action" percentage "requirements" or of what those "requirements" supposedly were. The record facts, instead, showed that General Motors occasionally offered a limited number of qualified minorities and females a chance to improve their apprentice scores if they successfully completed a pre-apprentice training program. [Pet'r App. pp. 9a-12a]. There was no "requirement" that any number of minorities and females be hired.

Lastly, Garnet erroneously relies on a District Court opinion in another lawsuit brought by his counsel on behalf of a different applicant and relating to a different General Motors plant. [Petition pp. 3-4]. Garnet (and his counsel) fail to advise this Court that the District Court granted summary judgment in General Motors' favor in that case on standing grounds, which judgment was later affirmed by the Sixth Circuit. See Yeager v. General Motors Corp., 265 F.3d 389 (6th Cir. 2001), petition for cert. filed, No. 01-0990 (U.S. Jan. 8, 2002). In addition, the Yeager appellate court declined to characterize the pre-apprentice program as a true training program or simply a method to increase apprentice scores, as the Court did not need to reach the issue to conclude that the plaintiff lacked standing to bring a reverse discrimination claim under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq. Id. at 395-96.

II. PROCEDURAL HISTORY

Garnet's discrimination claim was brought under Ohio Revised Code § 4112.02. After discovery, the District Court for the Northern District of Ohio granted summary judgment for General Motors. That decision is reported at Garnet v. General Motors Corp., 114 F. Supp.2d 649 (N.D. Ohio 2000). [Pet'r App. p. 8a]. The Sixth Circuit affirmed in an unreported decision. Garnet v. General Motors Corp., No. 00-4191, 2001 U.S. App. LEXIS 20942 (6th Cir. Sept. 21, 2001). [Pet'r App. p. 3a]. The Sixth Circuit later declined Garnet's invitation to revisit its disposition of his state law claim, rejecting his motion for reconsideration or for *en banc* review. [Pet'r App. p. 1a].

REASONS FOR DENYING THE WRIT

I. GARNET HAS NOT IDENTIFIED EITHER A FEDERAL QUESTION OR A CONFLICT BETWEEN AUTHORITIES TO JUSTIFY DISCRETIONARY REVIEW BY THIS COURT.

"Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." Sup. Ct. R. 10. Garnet has not identified any compelling reason for this Court to exercise discretionary jurisdiction over his appeal of the dismissal of his state law claim.

First, Garnet has failed to identify any conflict between the Sixth Circuit's judgment and that of any other court of appeals or state court of last resort. Indeed, the Sixth Circuit followed established law to hold that implementation of an affirmative action plan does not equate with "direct evidence" of unlawful discrimination. E.g., Plott v. General

Motors Corp., 71 F.3d 1190, 1194-95 (6th Cir. 1995), cert. denied, 517 U.S. 1157 (1996); Christensen v. Equitable Life Assurance Soc'y, 767 F.2d 340, 343 (7th Cir. 1985) ("National policy permits the use of voluntary affirmative action programs to remedy the legacy of discrimination. For the courts to discourage the use of such programs by treating them as evidence in themselves of the very discrimination they are designed to eradicate would be improper."), cert. denied, 474 U.S. 1102 (1986). Garnet cites no case in conflict with the Sixth Circuit's decision, nor could he have done so.

In addition, the Sixth Circuit did not decide a federal question, and none is presented here. Rather, the court interpreted Ohio Revised Code § 4112.02 and applied Ohio case authority setting forth the governing standard for cases brought under the state statute. [Pet'r App. pp. 5a-6a]. Moreover, Garnet's desire to have this Court interpret and "reverse" Ohio law for no reason other than it supposedly being "unfortunate precedent" surely does not justify plenary review by this Court. E.g., Haring v. Prosise, 462 U.S. 306, 314 n.8 (1983) ("We emphasize . . . that, standing alone, a challenge to state-law determinations by the court of appeals will rarely constitute an appropriate subject of this Court's review.").

At best, Garnet alleges that the Sixth Circuit misapplied state law to the facts of his case. But see Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of . . . misapplication of a properly stated rule of law."). The Petition merely restates Garnet's skewed version of the facts and his previously rejected arguments reflecting his interpretation of state law. He argues nothing new or novel.

At bottom, Garnet has failed to identify any legal authority contradicting the Sixth Circuit's decision, any circuit split on an important federal issue (or any federal issue at all), or any other reason to justify this Court's review of the disposition of his state law discrimination claim. Review should be denied.

II. THE LOWER COURTS DID NOT ERR IN DECIDING THE MERITS OF THIS CASE.

In addition, both the District Court and Sixth Circuit were correct in entering judgment against Garnet.

Despite Garnet's contention to the contrary, the Sixth Circuit correctly found that, "[w]hile the district court determined that Garnet had not demonstrated a prima facie case of reverse discrimination, Garnet does not challenge this conclusion by the court on appeal." [Pet'r App. p. 6a]. Indeed, Garnet's eight-page brief in the Sixth Circuit made no mention of the Title VII burden-shifting analysis set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Instead, Garnet's court of appeals brief focused entirely on the notion that he could have proven a prima facie reverse discrimination case by producing "direct evidence" of discrimination. The potential application of McDonnell Douglas and its progeny was not before the Sixth Circuit. Thus, Garnet's suggestion that "there appears to be confusion in appropriately applying the so-called McDonnell-Douglas model" was not preserved for appeal, even were it correct. E.g., Delta Air Lines v. August, 450 U.S. 346, 362 (1981) (finding that a "question [that] was not raised in the Court of Appeals . . . is not properly before us").

Garnet did not cite a single case in the District Court, in the Sixth Circuit or in his Petition to attempt to support his

theory that implementation of an affirmative action plan alone is "direct evidence" of unlawful discrimination sufficient to make out a prima facie case of reverse discrimination under Ohio law. In fact, the law in the Sixth Circuit and other jurisdictions is uniformly to the contrary, and fully supports the judgment of the lower courts. E.g., Plott, 71 F.3d at 1194-95; Christensen, 767 F.2d at 343; Plummer v. Safeway, Inc., No. 93-0316, 1995 U.S. Dist. LEXIS 3428, at *8 (D.D.C. Mar. 17, 1995) (holding that "[t]he existence of a race-conscious affirmative action program alone, however, is not evidence of suspicious circumstances sufficient to justify an inference of the discriminatory intent of an employer"). Here, the Sixth Circuit correctly found that "Garnet has not presented any other evidence which would require the conclusion that General Motors' actions were motivated, at least in part, by unlawful discrimination." [Pet'r App. at 7a].

Garnet's state law claim was properly dismissed by the District Court, and that decision was appropriately affirmed by the Sixth Circuit. Garnet presents no legitimate reason for review by this Court.

CONCLUSION

The petition should be denied.

Respectfully submitted,

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